

**Liaison Meeting  
10:30 a. m. – April 17, 2006  
Room 330, Transportation Building  
Bismarck, North Dakota**

**Attendees**

There were forty-five attendees representing twelve companies, along with representatives from the Associated General Contractors (AGC), the Federal Highway Administration (FHWA), and the North Dakota Department of Transportation (NDDOT). The meeting was held in Room 330 of the Transportation Building. It was also broadcast via, the NDDOT's video conferencing sites, at our district offices in: Grand Forks, Fargo, Valley City, Devils Lake, Minot, Williston, and Dickinson.

**Dave Sprynczynatyk, Director, North Dakota Department of Transportation**

Director Sprynczynatyk welcomed everyone to the meeting. Introductions were made in all locations.

There was good improvement made toward the annual DBE goal of 8.12% participation. With the March 17 bid opening there was an increase of 1.1% and participation is now at 5.43%.

If a project DBE goal is not met, the NDDOT looks at all aspects of how a prime contractor tried to achieve the DBE participation goal during the good faith efforts process. In some states, if the goal is not met the project is awarded to the next lowest contractor; ND does not award projects in this manner.

Job 48 will be delayed a week and will be bid on April 28, with the Memorial Bridge.

The Statewide Transportation Improvement Program (S.T.I.P.) was a three year plan but is now a four year plan due to federal changes. The S.T.I.P. for 2007-2010 should be out in May, comments will be taken June through July. The final document should be available in August or September.

The dollars available for projects are not going as far this year due to higher bid prices. There are \$20 million in projects that will not be completed this year; another \$3 to 4 million may have to be moved to 2007, depending on project bids received in April.

**Grant Levi, Deputy Director for Engineering**

**Contractor Signs On Construction Projects**

An example of an orange sign, which could be placed at a construction project, with the name of the prime contractor, the contractor's phone number, and the NDDOT logo, was shown for consideration.

Comments:

- The phone number should be someone with the contractor who has knowledge of the project.
- There could be many changes to the phone numbers as the project engineers change.
- Is the phone number necessary or is it a safety issue for driver's who would be distracted?
- The phone number could be replaced with the dollar amount of the projects so the taxpayers know what their money is being spent on.
- The signs should be placed either at the end of a project, or at both the beginning and the end of the project, but not only at the front of the project. By the time the drivers are through the project, if they have questions they will most likely not remember the name of the contractor on the sign.

Grant asked if there were any signs that could be placed this construction season. John Thompson in the Valley City District has one project in mind but would like to talk it over first.

**Work Force Safety**

We are transitioning into the construction season. Please make sure that sites have the proper signing. Post the correct signs when workers are present and please remove them when workers are not present. Improper signage becomes an enforcement issue for the ND Highway Patrol (NDHP). NDDOT has given NDHP \$70,000 toward overtime hours to enforce speed limits in construction zones.

**DBE Program**

NDDOT did a comprehensive review some years ago of the DBE Participation Program which led to a very complex program that allows the flexibility to look at projects and goals individually.

Steps in the good faiths efforts process are being missed. The intent of the DBE Program is for the prime contractor to build a relationship with the DBE community to achieve the project goal.

Project paperwork is not being completed and also is not being submitted in a timely manner. Form A's are not being completed. If contractors are bidding on a project they should make sure to advertise in the Supportive Services Newsletter. There are timelines for submitting quotes that need to be followed. During the last bid letting some prime contractors used quotes that came in after the deadline to cease quoting. NDDOT will step in when a DBE is involved and the decision to award will lie with Director Sprynczynatyk.

Question: If a quote comes in before the deadline, but a line is missed and the quote is amended after the deadline, is it acceptable to use the amended quote?

Answer: The DBE Participation Review Committee would have to review the use of the quote. The quote should have been sent in before the deadline, with enough time for any needed changes to be made, and still be able to meet the deadline.

Question: How many times has the committee voted not to award a project and then the project was then not awarded to the contractor?

Answer: That information is not readily available. We will have to follow up with the answer.

Question: When a DBE leaves or goes out-of-business is the goal readjusted for the year?

Answer: The goal is not readjusted in the current year. DBE firms leaving the state or going out-of-business enters into the upcoming year's calculations.

### **Bid Differential**

When a prime contractor submits their quotes and the NDDOT feels a DBE should have been used, NDDOT looks at the overall effort the prime made to meet the goal and the size of the individual project. NDDOT cannot and will not; under the federal guidelines, set bid differential limits. The options to this system are bid averaging and not to award if the project goal is not met.

Ronnie Hartl, Assistant Division Administrator, with the Federal Highway Administration (FHWA) stated that NDDOT is operating within federal guidance. There was a great deal of debate in Congress before the rules were finalized and sent out. Congress intended that a "magic number" not be set for a bid differential. To do so would be going against the intent of the Congress.

Question: How does NDDOT determine whether to use a DBE or not? What criteria are used?

Answer: NDDOT looks at the overall effort made by the prime to meet the project's goal, the DBE percentage, and the dollar value of the project. There are no hard and fast rules that are used. Each job is looked at individually and because a decision is made on one job, it does not set precedence for a different job. NDDOT could be consistent and go to a bid-

averaging process and if the goal is not met the job is awarded to the next lowest contractor.

Contractors noted that in MT and WY they have had no problems as long as they advertised and filled out the form that shows who submitted quotes. There are no quotes to turn in and no bid differential.

Director Sprynczynatyk will be meeting with the DOT directors from MT and WY next week and will ask how their programs differ from ND's.

Mark Dougherty from the AGC is concerned about comments that have been made in the DBE Participation Review Committee concerning jobs with large dollar amounts and that the small bid differential amount shouldn't make a difference. Mark stated the small amount does make a difference because it comes right out of the contractor's profits.

Question: At the time NDDOT calls the prime to say they must use the DBE, why can't NDDOT tell the prime what specifics are used to make that decision?

Answer: If there is little or no participation in the project the contractor should be looking at their numbers and anticipating bid differential. Grant and Darcy do explain to the prime during their calls why the decision was made to award subject to using a DBE. The intent of the DBE program is for the prime contractor to establish relationships with the DBEs to get quotes to meet the goals and not to just wait for DBE quotes to come in.

Referring to Mark Dougherty's comment, the dollar amount of the project is important because the larger jobs have more opportunity to meet the goals than the smaller jobs do.

Primes noted they are using DBEs and establishing relationships with the DBEs by using them outside of the DOT system. This makes it difficult to meet project DBE goals within the DOT system.

NDDOT has no way to measure DBE usage outside the DOT system. There is no other or better way available to monitor DBE usage because there is no easy methodology to compute usage based on capacity. DBE capacity may not be available to do all the work needed.

Question: When the committee meets, does it look at the extra efforts prime contractors make to meet the goal, like sending letters out to the DBEs?

- Answer: Yes, the committee looks at all efforts made by the prime contractor to meet the goal.
- Question: What are the ramifications from the FHWA if the annual goal is not met?
- Answer: NDDOT must demonstrate good faith efforts to the FHWA. If good faith efforts are not demonstrated, and the annual goal has historically not been met, FHWA can refuse to recertify NDDOT's DBE program and withhold federal highway funding. Without federal funding there is no highway construction in ND.

**Becky Hanson, Office of Operations, Civil Rights Officer**

On-the-Job-Training letters were sent to the prime contractors the end of last week and also today. These letters show each contractor the number of trainees assigned to date that they will have during the 2006 construction season. Contractors have 15 calendar days to return their paperwork.

**Cal Gendreau, Construction Services, Construction Engineer**

**Internet Question & Answer Pilot Project**

Ninety percent of all bid received in the last bid letting were received through the internet.

There is a question and answer section specifically for the Memorial Bridge project for pre-bid questions on the Construction Services web site.

Contractors can submit specific project questions and answers that will be posted to the Construction Services web site. All of the questions and answers will be printed and included in the proposal for the Memorial Bridge. Currently, nine questions have been submitted and answers have been posted.

All questions will be posted by April 20 to give contractors time to review them before the April 28th bid opening. Questions submitted after April 20 may not be posted.

Please give comments to Cal Gendreau or Phil Murdoff on whether the question submission should be expanded to include other projects and if it is helpful.

**Other questions or issues**

- Question: Are other states' departments of transportation paying for the bid differential?

- Answer: NDDOT is not aware of any states that reimburse for a bid differential.
- Question: Is the DBE Program more of a small business growth program or more of a non-discriminatory program?
- Answer: It is more of a small business growth program based on the growth of the program to include other types of businesses, including women owned businesses and disadvantaged businesses.
- Question: If ND would stop taking all sub-contractors' quotes and use a race-neutral, low quote program, would that jeopardize the federal funding?
- Answer: NDDOT tried to put in a "low quote" system and was informed that our federal funds were in jeopardy. "Low quote" is not an option unless NDDOT can historically prove that its annual goal has been met.
- Question: Do all states use the same criteria to set their annual DBE goals?
- Answer: The same framework is used in every state but not the same methodology. Congress established the DBE program guidelines to allow each individual state the ability to include unique things that work best for them.
- Question: The intent of the DBE Program is to build relationships, but when a decision is made by the committee to require the use of a DBE, the non-DBE relationship deteriorates. Does the NDDOT take this into consideration?
- Answer: NDDOT is working to find a way to help increase DBE participation while not hurting the non-DBE companies.

### **Conclusion**

The annual DBE goal setting for 2007 will be starting shortly. When the 2007 DBE goal is posted for comments, please send in specific suggestion on how to improve the program.

NDDOT will award \$30 million in projects this year. This is up more than \$70 million over last year, but there are 44 fewer jobs being let. In April \$100 million in projects will be awarded.

Grant asked if there were any further questions. No questions were asked.